

Advance Decisions to Refuse Treatment

(‘Living Wills’)



Advance Decisions to Refuse Treatment

An Advance Decision to Refuse Treatment allows you to record any medical treatments that you do not want to be given in the future, in case you later lack capacity to make or communicate your decision. It is commonly shortened to Advance Decision, and was previously known as a Living Will.

You can use an Advance Decision to refuse any treatment, including life-sustaining treatment.

You cannot use an Advance Decision to:

- request or demand particular treatments
- ask for anything illegal, such as assistance to end your life
- refuse basic care that keeps you clean and comfortable
- appoint someone to make decisions on your behalf

The law says that people must be assumed to have capacity to make a decision unless it is proven otherwise. However, if a decision needs to be made and a healthcare professional thinks that you might lack capacity, then they will assess whether or not you have capacity to make that decision.

An Advance Decision is legally binding in England and Wales under the Mental Capacity Act 2005, as long as it is 'valid' and 'applicable'. This means that if a healthcare professional knows you have made a valid and applicable Advance Decision, they must follow it. If they ignore a valid and applicable Advance Decision they could be taken to court.

The decisions you make about your future treatment and care are personal to you. You should think about your wishes carefully. It is also a good idea to discuss your decisions with the people close to you and with your doctor. Your doctor can help you to understand treatment options and will explain how any decisions you make might affect you. However, if you do not feel able to discuss your Advance Decision with your doctor for any reason, you do not have to. You do not have to be ill before making an Advance Decision.

An Advance Decision will only be used if it is 'valid' and 'applicable'.

To be valid:

- You must be 18 or over and have mental capacity to make your Advance Decision.
- You must clearly state the treatments you wish to refuse and the circumstances that you wish to refuse them in. The scenarios included in the form do this.
- You must not have acted inconsistently with the decisions made in your Advance Decision. For example, since completing your form you have joined a religion that has certain values or beliefs about refusing medical treatment or you have given doctors instructions which contradict your Advance Decision.
- A Lasting Power of Attorney for Health and Welfare signed after making your Advance Decision will cancel your Advance Decision, which will need to be signed again.
- If you want to refuse life-sustaining treatment, you need to clearly state in your Advance Decision that it is to apply even if your life is at risk.
- If you want to refuse life-sustaining treatment, you need to sign and date your Advance Decision in the presence of a witness. The witness must also sign the Advance Decision.



To be applicable (that is, for the doctors to use it):

- You must lack capacity to make the decision about your treatment, and
- Your Advance Decision must include details of the specific circumstances you are in and refuse the treatments that your doctor has proposed for you, and
- There must be no reason to believe that something has happened since making your Advance Decision which would have affected the decisions you made. For example, if there have been developments in medical treatment that you did not expect.

Information obtained from Compassion in Dying

A M DAVIES

— Solicitors —

Wills

Lasting Powers of Attorney

Advance Decisions (Living Wills)

Probate / Estate Administration

Funeral Plans

Business Documents

Contracts

Leases

Land

A M Davies Solicitors

Reynard Crag, Reynard Crag Lane,
High Birstwith, Harrogate, HG3 2JQ

T 01423 779479

F 01423 772862

W www.amdavies.co.uk



Solicitor: Angela M Davies LL.B - **Chartered Legal Executive:** Jeremy B Clough FCILEx TEP